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MAINE RULES OF EVIDENCE

TABLE OF RULES

ARTICLE I. GENERAL PROVISIONS

RULE:

[101. SCOPE.](#)

[102. PURPOSE AND CONSTRUCTION.](#)

[103. RULINGS ON EVIDENCE.](#)

[104. PRELIMINARY QUESTIONS.](#)

[105. LIMITED ADMISSIBILITY.](#)

[106. REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS.](#)

ARTICLE II. JUDICIAL NOTICE

[201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS.](#)

ARTICLE III. PRESUMPTIONS

[301. PRESUMPTIONS IN GENERAL IN CIVIL ACTIONS AND PROCEEDINGS.](#)

[302. PRESUMPTION OF LEGITIMACY.](#)

[303. PRESUMPTIONS IN CRIMINAL CASES.](#)

ARTICLE IV. RELEVANCY AND ITS LIMITS

[401. DEFINITION OF “RELEVANT EVIDENCE.”](#)

402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE.

403. EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME.

404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES.

405. METHODS OF PROVING CHARACTER.

406. HABIT; ROUTINE PRACTICE.

407. SUBSEQUENT REMEDIAL MEASURES; NOTIFICATION OF DEFECT.

408. COMPROMISE AND OFFERS TO COMPROMISE.

409. PAYMENT OF MEDICAL AND SIMILAR EXPENSES.

410. WITHDRAWN PLEAS AND OFFERS.

411. LIABILITY INSURANCE.

412. PAST SEXUAL BEHAVIOR OF VICTIM.

413. PROTECTION OF PRIVACY IN COURT PROCEEDINGS.

ARTICLE V. PRIVILEGES

501. PRIVILEGES RECOGNIZED ONLY AS PROVIDED.

502. LAWYER-CLIENT PRIVILEGE.

503. HEALTH CARE PROFESSIONAL, MENTAL HEALTH PROFESSIONAL AND COUNSELING PROFESSIONAL-PATIENT PRIVILEGE.

504. HUSBAND-WIFE PRIVILEGE.

505. RELIGIOUS PRIVILEGE.

506. POLITICAL VOTE.

507. TRADE SECRETS.

508. SECRETS OF STATE AND OTHER OFFICIAL INFORMATION;
GOVERNMENTAL PRIVILEGES.

509. IDENTITY OF INFORMER.

510. WAIVER OF PRIVILEGE BY VOLUNTARY DISCLOSURE.

511. PRIVILEGED MATTER DISCLOSED UNDER COMPULSION OR WITHOUT
OPPORTUNITY TO CLAIM PRIVILEGE.

512. COMMENT UPON OR INFERENCE FROM CLAIM OF PRIVILEGE IN
CRIMINAL CASES; INSTRUCTION.

513. CLAIM OF PRIVILEGE IN CIVIL CASES.

514. MEDIATOR'S PRIVILEGE.

ARTICLE VI. WITNESSES

601. COMPETENCY IN GENERAL; DISQUALIFICATION.

602. LACK OF PERSONAL KNOWLEDGE.

603. OATH OR AFFIRMATION.

604. INTERPRETERS.

605. COMPETENCY OF JUDGE AS WITNESS.

606. COMPETENCY OF JUROR AS WITNESS.

607. WHO MAY IMPEACH.

608. EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS.

609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME.

610. RELIGIOUS BELIEFS OR OPINIONS.

611. MODE AND ORDER OF INTERROGATION AND PRESENTATION.

612. WRITING OR OBJECT USED TO REFRESH MEMORY.

613. PRIOR STATEMENTS OF WITNESS.

614. CALLING AND INTERROGATION OF WITNESSES BY COURT.

615. EXCLUSION OF WITNESSES.

616. ILLUSTRATIVE AIDS.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

701. OPINION TESTIMONY BY LAY WITNESSES.

702. TESTIMONY BY EXPERTS.

703. BASIS OF OPINION TESTIMONY BY EXPERTS.

704. OPINION ON ULTIMATE ISSUE.

705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION.

706. COURT APPOINTED EXPERTS.

ARTICLE VIII. HEARSAY

801. DEFINITIONS.

802. HEARSAY RULE.

803. HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL.

804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE.

805. HEARSAY WITHIN HEARSAY.

806. ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

901. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION.

902. SELF-AUTHENTICATION.

903. SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY.

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND
PHOTOGRAPHS

1001. DEFINITIONS.

1002. REQUIREMENT OF ORIGINAL.

1003. RESERVED.

1004. ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS.

1005. PUBLIC RECORDS.

1006. SUMMARIES.

1007. TESTIMONY OR WRITTEN ADMISSION OF PARTY.

1008. FUNCTIONS OF COURT AND JURY.

ARTICLE XI. MISCELLANEOUS RULES

1101. APPLICABILITY OF RULES.

1102. TITLE.

MAINE RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

RULE 101. SCOPE

These rules govern proceedings in the courts of this state, to the extent and with the exceptions stated in Rule 1101.

RULE 102. PURPOSE AND CONSTRUCTION

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

RULE 103. RULINGS ON EVIDENCE

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of offer and ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Effect of pretrial ruling. A pretrial objection to or proffer of evidence must be timely renewed at trial unless the court states on the record, or the context clearly demonstrates, that a ruling on the objection or proffer is final.

(d) Hearing of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(e) Obvious error. Nothing in this rule precludes taking notice of obvious errors affecting substantial rights although they were not brought to the attention of the court

RULE 104. PRELIMINARY QUESTIONS

(a) Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making this determination it is not bound by the rules of evidence except those with respect to privileges and on questions arising in hearings on motions to suppress evidence and the like.

(b) Relevancy conditioned on fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon the introduction of evidence sufficient to support a finding that the condition has been fulfilled. The court has discretion to admit evidence conditionally upon the representation that its relevancy will be established by evidence subsequently offered.

(c) Hearing of jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, and so requests.

(d) Testimony by accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(e) Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

RULE 105. LIMITED ADMISSIBILITY

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court upon request shall restrict the evidence to a proper scope and instruct the jury accordingly. In a criminal case tried to a jury evidence inadmissible as to one defendant shall not be admitted as to other defendants unless all references to the defendant as to whom it is inadmissible have been effectively deleted.

RULE 106. REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS

When a writing or recorded statement or part thereof is utilized in court by a party, an adverse party has the right upon request to inspect it. The court on motion of the adverse party may require the introduction at that time of the writing or recorded statement or any part thereof or any other writing or recorded statement which ought in fairness to be then considered.

ARTICLE II. JUDICIAL NOTICE

RULE 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS

(a) Scope of rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. The court shall instruct the jury to accept as conclusive any fact judicially noticed.

ARTICLE III. PRESUMPTIONS

RULE 301. PRESUMPTIONS IN GENERAL IN CIVIL ACTIONS AND PROCEEDINGS

(a) Effect. In all civil actions and proceedings, except as otherwise provided by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

(b) Prima facie evidence. A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a presumption within the meaning of this rule.

(c) Inconsistent presumptions. If two presumptions arise which are conflicting with each other, the court shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such preponderance, both presumptions shall be disregarded.

RULE 302. PRESUMPTION OF LEGITIMACY

Whenever it is established in an action that a child was born to or conceived by a woman while she was lawfully married, the party asserting the illegitimacy of the child has the burden of producing evidence and the burden of persuading the trier of fact beyond a reasonable doubt of such illegitimacy.

RULE 303. PRESUMPTIONS IN CRIMINAL CASES

(a) Scope. Except as otherwise provided by statute, in criminal cases presumptions against an accused, recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, are governed by this rule.

(b) Submission to jury. The court is not authorized to direct the jury to find a presumed fact against the accused. The court may submit the question of guilt or of the existence of the presumed fact to the jury, if, but only if, a reasonable juror on the evidence as a whole, including the evidence of the basic facts, could find guilt or the presumed fact beyond a reasonable doubt.

(c) Instructing the jury. Whenever the existence of a presumed fact against the accused is submitted to the jury, the court in instructing the jury should avoid charging in terms of a presumption. The charge shall include an instruction to the effect that the jurors have a right to draw reasonable inferences from facts proved beyond a reasonable doubt and may convict the accused in reliance upon an inference of fact if they conclude that such inference is valid and if the inference convinces them of guilt beyond a reasonable doubt and not otherwise.

ARTICLE IV. RELEVANCY AND ITS LIMITS

RULE 401. DEFINITION OF "RELEVANT EVIDENCE"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

RULE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE

All relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute or by these rules or by other rules applicable in the courts of this state. Evidence which is not relevant is not admissible.

RULE 403. EXCLUSION OF RELEVANT EVIDENCE ON
GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

RULE 404. CHARACTER EVIDENCE NOT ADMISSIBLE
TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

(2) Character of witness. Evidence of the character of a witness, as provided in Rules 607, 608 and 609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith.

RULE 405. METHODS OF PROVING CHARACTER

(a) Reputation. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

RULE 406. HABIT; ROUTINE PRACTICE

(a) Admissibility. Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

(b) Method of proof. Habit or routine practice may be proved by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

RULE 407. SUBSEQUENT REMEDIAL MEASURES; NOTIFICATION OF DEFECT

(a) Subsequent remedial measures. When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require exclusion of evidence of subsequent measures when offered for another purpose such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment.

(b) Notification of defect. A written notification by a manufacturer of any defect in a product produced by such manufacturer to purchasers thereof is admissible against the manufacturer on the issue of existence of the defect to the extent that it is relevant.

RULE 408 COMPROMISE AND OFFERS TO COMPROMISE

(a) Settlement Discussions. Evidence of furnishing or offering or promising to furnish, or accepting or offering or promising to accept, a valuable consideration in compromise or attempting to compromise a claim is not admissible to prove liability for, invalidity of, or amount of the claim or any other claim. Evidence of conduct or statements made in compromise negotiations or in mediation is also not admissible on any substantive issue in dispute between the parties or to impeach a witness through a prior inconsistent statement or contradiction.

(b) Mediation. Evidence of conduct or statements by any party or mediator at a mediation session undertaken to comply with any statute, court rule, or administrative agency rule or in which the parties have been referred to mediation by a court, administrative agency, or arbitrator or in which the parties and mediator have agreed in writing or electronically to mediate with an expectation of confidentiality, is not admissible for any purpose other than to prove fraud, duress, or other cause to invalidate the mediation result in the proceeding with respect to which the mediation was held or in any other proceeding between the parties to the mediation that involves the subject matter of the mediation.

RULE 409. PAYMENT OF MEDICAL AND SIMILAR EXPENSES

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

RULE 410. WITHDRAWN PLEAS AND OFFERS

Except as otherwise provided, evidence of a plea, later withdrawn, of guilty or nolo contendere, or of an offer so to plead to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case, or proceeding against the person who made the plea or offer.

RULE 411.

LIABILITY INSURANCE

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully.

RULE 412. PAST SEXUAL BEHAVIOR OF VICTIM

(a) In a civil or criminal case in which a person is accused of sexual misconduct toward an individual, reputation or opinion evidence of past sexual behavior of the alleged victim of such misconduct is not admissible.

(b) In a criminal case in which a person is accused of sexual misconduct toward a victim the only evidence of the alleged victim's past sexual behavior that may be admitted is the following:

(1) Evidence, other than reputation or opinion evidence, of sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

(2) Evidence, other than reputation or opinion evidence, of sexual behavior with the accused offered by the accused on the issue of whether the alleged victim consented to the sexual behavior with respect to which the accused is charged.

(3) Evidence the exclusion of which would violate the constitutional rights of the defendant.

(c) In a civil case in which a person is accused of sexual misconduct toward an individual, evidence of specific instances of sexual behavior by the individual may only be admitted if the court finds that the probative value of such evidence on a controverted issue

outweighs the danger of unfair prejudice, confusion of the issues, misleading the jury and unwarranted harm to the individual.

RULE 413. PROTECTION OF PRIVACY IN COURT PROCEEDINGS

(a) Evidence of the identity, address, employment or location of any person shall be inadmissible if such person requests the exclusion of such evidence and:

(1) the court is notified that there is a court order in effect that prohibits contact between such person and another person, or

(2) it is alleged under oath, orally or in writing, that such person's health, safety or liberty would be jeopardized by the disclosure of such information, and the court determines that disclosure of such information would jeopardize such person as alleged unless the court finds that such evidence is of a material fact essential to the determination of the proceeding.

(b) The court shall conduct all proceedings to determine the admissibility of evidence under this rule in a manner so as not to disclose the information sought to be excluded, unless the court finds that a party's right to due process and a fair hearing would be violated if the information is not disclosed.

(c) If the court determines that information otherwise inadmissible under this Rule must be admitted as evidence of a material fact essential to the determination of the proceedings, the court shall receive such evidence *in camera*. In child protective proceedings pursuant to Title 22 MRS such evidence shall be received *in camera* and outside the presence of any person subject to a court order (section 1(a) above) or constituting a risk of health, safety or liberty (section 1(b) above) and that person's attorney.

(d) Persons who may object to the admission of evidence under this rule include parties to the proceeding, their attorneys, a guardian ad litem, any person called as a witness, a juror, and any person, who, although not a witness or party, is a subject of the proceeding such as a child or a protected person.

ARTICLE V. PRIVILEGES

RULE 501. PRIVILEGES RECOGNIZED ONLY AS PROVIDED

Except as otherwise provided by Constitution or statute or by these or other rules promulgated by the Supreme Judicial Court of this state no person has a privilege to:

1. Refuse to be a witness; or
2. Refuse to disclose any matter; or
3. Refuse to produce any object or writing; or
4. Prevent another being a witness or disclosing any matter or producing any object or writing.

RULE 502. LAWYER-CLIENT PRIVILEGE

(a) Definitions. As used in this rule:

(1) A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(2) A "representative of the client" is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.

(3) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(4) A "representative of the lawyer" is one employed by the lawyer to assist the lawyer in the rendition of professional legal services.

(5) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between the client or the client's representative and the client's lawyer or the lawyer's representative, or (2) between the lawyer and the lawyer's representative, or (3) by the client or the client's representative or the lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein, or (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.

(c) Who may claim the privilege. The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

(d) Exceptions. There is no privilege under this rule:

(1) Furtherance of crime or fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud; or

(2) Claimants through same deceased client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction; or

(3) Breach of duty by a lawyer or client. As to a communication relevant to an issue of breach of duty by the lawyer to the lawyer's client or by the client to the client's lawyer; or

(4) Document attested by lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(5) Joint clients. As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients; or

(6) Public officer or agency. As to communications between a public officer or agency and its lawyers unless the communications concern a pending investigation, claim or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

RULE 503. HEALTH CARE PROFESSIONAL, MENTAL HEALTH PROFESSIONAL, AND LICENSED COUNSELING PROFESSIONAL-PATIENT PRIVILEGE

(a) Definitions. As used in this rule:

(1) A "patient" is a person who consults or is examined or interviewed by a health care professional, a mental health professional, or a licensed counseling professional.

(2) A "health care professional" is (A) a person authorized to practice as a physician; (B) a person licensed as a physician's assistant; or (C) a licensed nurse practitioner, under the laws of the State of Maine or under substantially similar laws of any other state or nation, while engaged in the practice of the health care profession for which he or she is licensed.

(3) A "mental health professional" is (A) a health care professional while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction; (B) a person licensed or certified as a psychologist or psychological examiner under the laws of the State of Maine or under substantially similar laws of any state or nation, while similarly engaged; or (C) a person licensed as a clinical social worker, under the laws of the State of Maine or under substantially similar laws of any other state or nation, while similarly engaged.

(4) A "licensed counseling professional" is (A) "licensed professional counselor;" (B) a "licensed clinical professional counselor;" (C) a "licensed marriage and family therapist;" or (D) a "licensed pastoral counselor" licensed to diagnose and treat mental health disorders, intra-personal and interpersonal problems or other dysfunctional behavior of a social and spiritual nature under 32 M.R.S. § 13858 or under substantially similar laws of any other state or nation, while so engaged.

(5) A communication is "confidential" if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the

communication, or persons who are participating in the diagnosis and treatment under the direction of the health care professional, mental health professional, or licensed counseling professional, including members of the patient's family.

(b) General rule of privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the patient's health care professional, mental health professional, or licensed counseling professional, and persons who are participating in the diagnosis or treatment under the direction of said professionals, including members of the patient's family.

(c) Privilege of accused. When an examination of the mental condition of an accused in a criminal proceeding is ordered by the court for the purpose of determining criminal responsibility, the accused has a privilege to refuse to disclose and to prevent any other person from disclosing any communication concerning the offense charged, made in the course of the examination.

(d) Who may claim the privilege. The privilege may be claimed by the patient, by the patient's guardian or conservator, or by the personal representative of a deceased patient. The person who was the health care professional, mental health professional, or licensed counseling professional at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

(e) Exceptions.

(1) Proceedings for hospitalization. There is no privilege under this rule for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the health care professional, mental health professional, or licensed counseling professional in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.

(2) Examination by order of court. Except as otherwise provided in subdivision (c), if the court orders an examination of the physical, mental or emotional condition of a patient, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

(3) Condition an element of claim or defense. There is no privilege under this rule as to communications relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which the condition of the patient is an element of the claim or defense of the patient, or of any party claiming, through or under the patient or because of the patient's condition, or claiming as a beneficiary of the patient, through a contract to which the patient is or was a party, or after the patient's death, in any proceeding in which any party puts the condition in issue.

RULE 504. HUSBAND-WIFE PRIVILEGE

(a) Definition. A communication is confidential if it is made privately by any person to his or her spouse and is not intended for disclosure to any other person.

(b) General rule of privilege. A married person has a privilege to prevent his or her spouse from testifying as to any confidential communication from such person to the spouse.

(c) Who may claim the privilege. The privilege may be claimed by the person who made the communication or by the spouse in his or her behalf. The authority of the spouse to do so is presumed.

(d) Exceptions. There is no privilege under this rule in a proceeding in which one spouse is charged with a crime against the person or property of (1) the other, (2) a child of either, (3) any person residing in the household of either, or (4) a third person committed in the course of committing a crime against any of them; or in a civil proceeding in which the spouses are adverse parties.

RULE 505. RELIGIOUS PRIVILEGE

(a) Definitions. As used in this rule:

(1) A "member of the clergy" is a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting that individual.

(2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy acting as spiritual adviser.

(c) Who may claim the privilege. The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The person who was the member of the clergy at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

RULE 506. POLITICAL VOTE

(a) General rule of privilege. Every person has a privilege to refuse to disclose the tenor of the person's vote at a political election conducted by secret ballot.

(b) Exceptions. This privilege does not apply if the court finds that the vote was cast illegally or determines that the disclosure should be compelled pursuant to the election laws of the state.

RULE 507. TRADE SECRETS

A person has a privilege, which may be claimed by the person or the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege and of the parties and the furtherance of justice may require.

RULE 508. SECRETS OF STATE AND OTHER OFFICIAL INFORMATION; GOVERNMENTAL PRIVILEGES

(a) Federal privilege. If the law of the United States creates a governmental privilege that the courts of this state must recognize under the Constitution of the United States, the privilege may be claimed as provided by the law of the United States.

(b) Other governmental privilege. No other governmental privilege is recognized except as created by the Constitution or statutes of this state.

(c) Effect of sustaining claim. If a claim of governmental privilege is sustained and it appears that a party is thereby deprived of material evidence, the court shall make any further orders which the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding upon an issue as to which the evidence is relevant, or dismissing the action.

RULE 509. IDENTITY OF INFORMER

(a) Rule of privilege. The United States, a state or subdivision thereof, or any foreign country has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who may claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

(c) Exceptions.

(1) Voluntary Disclosure; Informer a Witness. No privilege exists under this rule if the identity of the informer or the informer's interest in the subject matter of the informer's communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the state.

(2) Testimony on Relevant Issue. If it appears in the case that an informer may be able to give testimony relevant to any issue in a civil or criminal case to which a public entity is a party, and the informed public entity invokes the privilege, the court may give the public entity an opportunity to show in camera and on the record facts relevant to determining

whether the informer can, in fact, supply that testimony. The showing may be in the form of affidavits, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the court finds there is a reasonable probability that the informer can give relevant testimony, the court on motion of a party or on its own motion may enter a conditional order for appropriate relief, to be granted if the public entity elects not to disclose within the time specified the identity of such informer. In a criminal case such relief may include one or more of the following: granting the defendant additional time or a continuance, relieving the defendant from making disclosures otherwise required, prohibiting the prosecuting attorney from introducing specified evidence, and dismissing charges. In a civil case the court may provide any relief that the interests of justice require. Evidence submitted to the court shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and a docket entry shall be made specifying the form of such evidence but not its content or the identity of any declarant. The contents shall not otherwise be revealed without consent of the informed public entity. All counsel and parties are permitted to be present at every stage of proceedings under this subdivision except at a showing in camera at which only counsel for the public entity shall be permitted to be present.

RULE 510. WAIVER OF PRIVILEGE BY VOLUNTARY DISCLOSURE

A person upon whom these rules confer a privilege against disclosure waives the privilege if the person or the person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.

RULE 511. PRIVILEGED MATTER DISCLOSED UNDER COMPULSION OR WITHOUT OPPORTUNITY TO CLAIM PRIVILEGE

A claim of privilege is not defeated by a disclosure which was (a) compelled erroneously or (b) made without opportunity to claim the privilege.

RULE 512. COMMENT UPON OR INFERENCE FROM CLAIM OF PRIVILEGE IN CRIMINAL CASES; INSTRUCTION

(a) Comment or inference not permitted. The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel in a criminal case. No inference may be drawn therefrom.

(b) Claiming privilege without knowledge of jury. In criminal cases tried to a jury, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(c) Jury instruction. Upon request, any accused in a criminal case against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

RULE 513. CLAIM OF PRIVILEGE IN CIVIL CASES

(a) Comment or inference permitted. The claim of the privilege against self-incrimination by a party in a civil action or proceeding, whether in the present proceeding or upon a prior occasion, is a proper subject of comment by judge or counsel. An appropriate inference may be drawn therefrom.

(b) Claim of privilege by nonparty witness. The claim of a privilege by a nonparty witness in a civil action or proceeding shall be governed by the provisions of Rule 512.

RULE 514. MEDIATOR'S PRIVILEGE

(a) Definitions. As used in this rule:

(1) A “mediating party” is a person who is participating in a mediation proceeding as a party or as a representative of a party, regardless of whether the subject matter of that proceeding is in litigation.

(2) A “mediation” is any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute, whether or not the dispute is the subject of litigation.

(3) A “mediator” is a neutral person conducting the mediation proceeding in the capacity of mediator.

This Rule shall be subject to provisions of state and federal statutes and regulations issued thereunder for mediations taking place pursuant to such statutory authority.

(b) Mediator Privilege. All memoranda and other work product, including files, reports, interviews, case summaries, and notes, prepared by a mediator shall be confidential and not subject to disclosure in any subsequent judicial or administrative proceeding involving any of the parties to any mediation in which the materials are generated; nor shall a mediator be compelled to testify in any subsequent judicial or administrative proceeding concerning a mediation or to any communication made between him or her and any

participant in the mediation process in the course of, or relating to the subject matter of, any mediation.

(c) *Exceptions.* There is no privilege under this rule:

(1) *Mediated agreement.* For a communication that is in an agreement evidenced by a record signed by all parties to the agreement.

(2) *Furtherance of crime or fraud.* If the services of the mediator were sought or obtained to enable or aid anyone to commit or plan to commit or to what the mediating party knew or reasonably should have known to be a crime or fraud, or to conceal an ongoing crime or ongoing criminal activity.

(3) *Plan to inflict harm.* For threats or statements of an intention to inflict bodily injury or commit a crime.

(4) *Mediator misconduct.* For communications sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator.

(5) *Party or counsel misconduct.* For communications sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation.

(6) *Welfare of child or adult.* For communications sought or offered to prove or disprove abuse, neglect, abandonment or exploitation in a criminal proceeding or a child or adult protective action.

(7) *Manifest injustice.* For communications that a court, administrative agency, or arbitrator finds, after a hearing in camera, that the disclosure of which is necessary in the particular case to prevent a manifest injustice, and that the necessity for disclosure is of a sufficient magnitude to outweigh the importance of protecting the general requirement of confidentiality in mediation proceedings.

ARTICLE VI. WITNESSES

RULE 601. COMPETENCY IN GENERAL; DISQUALIFICATION

(a) *General rule of competency.* Every person is competent to be a witness except as otherwise provided in these rules.

(b) Disqualification of witness. A person is disqualified to be a witness if the court finds that (1) the proposed witness is incapable of communicating concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand the proposed witness, (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth, (3) the proposed witness lacked any reasonable ability to perceive the matter or (4) the proposed witness lacks any reasonable ability to remember the matter. An interpreter is subject to all the provisions of these rules relating to witnesses.

RULE 602. LACK OF PERSONAL KNOWLEDGE

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

RULE 603. OATH OR AFFIRMATION

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the witness's duty to do so.

RULE 604. INTERPRETERS

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

RULE 605. COMPETENCY OF JUDGE AS WITNESS

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

RULE 606. COMPETENCY OF JUROR AS WITNESS

(a) At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If a juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning any juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received.

RULE 607. WHO MAY IMPEACH

The credibility of a witness may be attacked by any party, including the party calling the witness.

RULE 608. EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS

(a) Reputation evidence of character. The credibility of a witness may be attacked or supported by evidence of reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by reputation evidence or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness's character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness's privilege against self-incrimination when examined with respect to matters which relate only to credibility.

RULE 609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

(a) General rule. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a specific crime is admissible but only if the crime (1)

was punishable by death or imprisonment for one year or more under the law under which the witness was convicted, or (2) involved dishonesty or false statement, regardless of the punishment. In either case admissibility shall depend upon a determination by the court that the probative value of this evidence on witness credibility outweighs any unfair prejudice to a criminal defendant or to any civil party.

(b) Time limit. Evidence of a conviction under this rule is admissible only if less than 15 years have transpired since said conviction or less than 10 years have transpired since termination of any incarceration period therefor.

(c) Effect of pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible under this rule if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure.

(d) Juvenile adjudications. Evidence of a juvenile adjudication in a proceeding open to the public may be admitted under this rule. Evidence of a juvenile adjudication in a proceeding from which the public was excluded may be admitted under this rule only in another juvenile proceeding from which the public is excluded.

RULE 610. RELIGIOUS BELIEFS OR OPINIONS

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness's credibility is impaired or enhanced.

RULE 611. MODE AND ORDER OF INTERROGATION AND PRESENTATION

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence on direct and cross-examination so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. In the interests of justice, the judge may limit cross-examination with respect to matters not testified to on direct examination.

(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony. Ordinarily leading questions should be permitted on cross-examination. A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of the state or any political subdivision thereof or of a public or private corporation or of an association or body politic which is an adverse party, and interrogate such a witness by leading questions and contradict and

impeach the witness in all respects as if the witness had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of the witness's examination in chief. A witness examined in chief only as to the signature to or execution of a paper may be cross-examined only as to such signature or execution.

RULE 612. WRITING OR OBJECT USED TO REFRESH MEMORY

(a) While testifying. If, while testifying, a witness uses a writing or object to refresh the witness's memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.

(b) Before testifying. If, before testifying, a witness uses a writing or object to refresh the witness's memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have the writing or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.

(c) Terms and conditions of production and use. A party entitled to have a writing or object produced under this rule is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If production of the writing or object at the trial, hearing, or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing or object contains matters not related to the subject matter of the testimony the court shall examine the writing or object in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing or object is not produced, made available for inspection, or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the state elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

RULE 613. PRIOR STATEMENTS OF WITNESS

In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

RULE 614. CALLING AND INTERROGATION OF WITNESSES
BY COURT

(a) Calling by court. The court may, on its own motion when necessary in the interests of justice or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by court. The court may interrogate witnesses, whether called by itself or by a party.

(c) Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity out of the hearing of the jury.

RULE 615. EXCLUSION OF WITNESSES

At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause.

RULE 616. ILLUSTRATIVE AIDS

(a) Subject to the provisions hereof, depictions and objects not admissible in evidence may be used to illustrate the testimony of witnesses or the arguments of counsel.

(b) The court in its discretion may condition, restrict or exclude the use of any illustrative aid to avoid the risk of unfair prejudice, surprise, confusion or waste of time.

(c) Consistent with the constitutional rights of criminal defendants, illustrative aids prepared before use shall be disclosed to opposing counsel before use so as to permit reasonable opportunity for objection under Subsection (b).

(d) Illustrative aids shall not accompany the jury during deliberations unless by consent of all parties or order of court on good cause shown.

(e) Illustrative aids shall remain the property of the party proposing them providing that:

- i. during the trial they may be used by any party; and
- ii. on request of any party they shall be preserved for the record of further proceedings or on appeal.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

RULE 701. OPINION TESTIMONY BY LAY WITNESSES

If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

RULE 702. TESTIMONY BY EXPERTS

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

RULE 703. BASIS OF OPINION TESTIMONY BY EXPERTS

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

RULE 704. OPINION ON ULTIMATE ISSUE

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

(a) Disclosure of Underlying Facts. The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

(b) **Objection.** An adverse party may object to the testimony of an expert on the ground that the expert does not have a sufficient basis for expressing an opinion. Counsel may before the witness gives an opinion be allowed to conduct in the absence of the jury a voir dire examination directed to the underlying facts or data on which the opinion is based. If a prima facie case is made that the expert does not have sufficient basis for the expert's opinion, the opinion is inadmissible unless the party offering the testimony first establishes the underlying facts or data.

RULE 706. COURT APPOINTED EXPERTS

(a) **Appointment.** The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the expert consents to act. A witness so appointed shall be informed of the witness's duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness's findings, if any; the witness's deposition may be taken by any party; and the witness may be called to testify by the court or any party. Such a witness shall be subject to cross-examination by each party, including a party calling the witness.

(b) **Compensation.** Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. Except as otherwise provided by law, the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) **Disclosure of appointment.** In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) **Parties' experts of own selection.** Nothing in this rule limits the parties in calling witnesses of their own selection.

ARTICLE VIII. HEARSAY

RULE 801. DEFINITIONS

The following definitions apply under this article:

(a) **Statement.** A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) **Declarant.** A "declarant" is a person who makes a statement.

(c) **Hearsay.** "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the witness's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition; or (B) one of identification of a person made after perceiving the person. A prior consistent statement by the declarant, whether or not under oath, is admissible only to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.

(2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, but not to the principal or employer himself, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, but not to the principal or employer, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered, but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

RULE 802. HEARSAY RULE

Hearsay is not admissible except as provided by law or by these rules. The words "as provided by law" include applicable state and federal statutes, the Maine Rules of Civil Procedure and the Maine Rules of Criminal Procedure.

RULE 803. HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition such as intent, plan, motive, design, mental feeling, pain, and bodily health, but not including a

statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly. If admissible, the memorandum or record may be read into evidence but shall not be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted business. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business, and if it was the regular practice of that business to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 903(12) or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports.

(A) To the extent not otherwise provided in (B), records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law.

(B) The following are not within this exception to the hearsay rule: (i) investigative reports by police and other law enforcement personnel; (ii) investigative reports prepared by or for a government, a public office or an agency when offered by it in a case in which it is a party; (iii) factual findings offered by the state in criminal cases; (iv) factual findings resulting from special investigation of a particular complaint, case, or incident; (v) any matter as to which the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) RESERVED.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admissible, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage, or among the person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of the person's personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation as to character. Reputation of a person's character among associates or in the community.

(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty, adjudging a person guilty of a crime punishable by death or imprisonment of one year or more, to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

(23) Judgment as to personal, family or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

RULE 804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

(a) Definition of unavailability. "Unavailability as a witness" includes situation in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance by process or other reasonable means.

A declarant is not unavailable as a witness if the declarant's exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the declarant's statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement under belief of impending death. A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability or to render invalid a claim by the declarant against another or to make the declarant an object of hatred, ridicule, or disgrace, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. A statement or confession offered against the accused in a criminal case, made by a defendant or other person implicating both the declarant and the accused, is not within this exception.

(4) Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

RULE 805. HEARSAY WITHIN HEARSAY

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

RULE 806. ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT

When a hearsay statement, or a statement defined in Rule 801(d)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

RULE 901. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge. Testimony of a witness with knowledge that a matter is what it is claimed to be.

(2) Nonexpert opinion on handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by court or expert witness. Comparison by the court or by expert witnesses with specimens which have been authenticated.

(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, which may include self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilations. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence twenty years or more at the time it is offered.

(9) Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods provided by statute or rule. Any method of authentication or identification provided by a rule of the Supreme Judicial Court of this state or by a statute or as provided in the Constitution of this state.

RULE 902. SELF-AUTHENTICATION

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign public documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any law of the United States or of this state.

(5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(6) Newspapers and periodicals. Printed material purporting to be newspapers or periodicals.

(7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Presumptions created by law. Any signature, document, or other matter declared by any law of the United States or of this state, to be presumptively or prima facie genuine or authentic.

(11) Certified Domestic Records of Regularly Conducted Activity.--The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of Congress or rule prescribed by the Supreme Judicial Court, certifying that the record--

(A) was made at or near the time of the occurrence of the matter set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to object to the authenticity of the record or on the basis of hearsay. In the event that an adverse party raises objection to a record offered under this paragraph, the court may in the interests of justice refuse to accept the certification under this paragraph and require the party offering the record to provide appropriate foundation by other evidence.

(12) Certified Foreign Records of Regularly Conducted Activity. --In a civil case, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration by its custodian or other qualified person certifying that the record--

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

The declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to object to the authenticity of the record or on the basis of hearsay. In the event that an adverse party raises timely objection to a record offered under this paragraph, the court may in the interests of justice refuse to accept the certification under this paragraph and require the party offering the record to provide appropriate foundation by other evidence.

RULE 903. SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY

Except as provided by statute, the testimony of a subscribing witness is not required to authenticate a writing.

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

RULE 1001. DEFINITIONS

For purposes of this article the following definitions are applicable:

(1) Writings and recordings. "Writings" and "recordings" consist of letters, words, sounds, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) Photographs. "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(3) Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

RULE 1002. REQUIREMENT OF ORIGINAL

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.

RULE 1003. RESERVED

RULE 1004. ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(1) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) Original not obtainable. No original can be obtained by any available judicial process or procedure; or

(3) Original in control of opponent. At a time when an original was under the control of the party against whom offered, the party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and the party does not produce the original at the hearing; or

(4) Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.

RULE 1005. PUBLIC RECORDS

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

RULE 1006. SUMMARIES

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

RULE 1007. TESTIMONY OR WRITTEN ADMISSION OF PARTY

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by the party's written admission, without accounting for the nonproduction of the original.

RULE 1008. FUNCTIONS OF COURT AND JURY

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is for the court to determine in accordance with the provisions of Rule 104.

ARTICLE XI. MISCELLANEOUS RULES

RULE 1101. APPLICABILITY OF RULES

(a) Rules applicable. Except as otherwise provided in (b), these rules apply to all actions and proceedings in the Supreme Judicial Court, the Superior Court, the District Court, and the Probate Court.

(b) Rules inapplicable. The rules other than those with respect to privileges do not apply in the following situations:

(1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence except as otherwise provided in Rule 104.

(2) Grand jury. Proceedings before grand juries.

(3) Juvenile Proceedings. To proceedings under the Maine Juvenile Code other than (a) probable cause determinations in bindover hearings and (b) adjudicatory hearings.

(4) Miscellaneous Proceedings. Statutory small claims proceedings in the District Court prior to rendition of judgment; proceedings for sentencing; issuance of warrants; proceedings with respect to release on bail or otherwise; proceedings for granting of probation or parole; proceedings on probation or parole violations; and proceedings for determination of probable cause.

(5) Contempt Proceedings. Those contempt proceedings in which the court may act summarily.

RULE 1102. TITLE

These rules may be known and cited as the Maine Rules of Evidence.

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